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Ontario Securities Commission
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Nova Scotia Securities Commission
Newfoundland and Labrador Securities Commission
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RE: Changes to Proposed National Instrument 51-102 *Continuous Disclosure Obligations*, Form 51-102F1, Form 51-102F2, Form 51-102F3, Form 51-102F4, Form 51-102F5, Form 51-102F6, and Companion Policy 51-102CP *Continuous Disclosure Obligations*

We have read the above-mentioned documents and in response in response to the specific questions in the request for comment, we have the following comments for your consideration:

1. *Filing documents* - Part 11 of the Rule requires reporting issuers to file copies of any materials they send to their securityholders. Part 12 of the Rule requires reporting issuers to file copies of contracts that create or materially affect the rights of their securityholders.

    a) We propose to limit these requirements to instances in which securities of the class are held by more than 50 securityholders. This is to prevent issuers from having to file documents

that relate to isolated securityholders, such as a bank holding security in connection with a business loan, if the bank is the only holder of that class of security. Is this the correct approach, or should copies of all materials sent to securityholders and all agreements that affect the rights of securityholders, regardless of the number of securityholders, be required to be filed?

We agree that the approach in this document is the correct approach.

b) Should we expand the requirement in Part 12 to require filing of all contracts that are material to the issuer? These contracts are required to be filed with an annual report on Form 10-K, in the US.

We do believe that the requirement in Part 12 should be expanded to include all contracts material to the issuer. We believe it is appropriate for securityholders to have access to contracts that create or materially affect their rights. Other materials that do not affect their rights should not be required to be filed.

2. *Business acquisition disclosure* - The Rule would require the filing of a BAR, in addition to any material change report filed in respect of the acquisition, within 75 days after completion of the significant acquisition. This requirement is meant to achieve greater consistency with the prospectus rules implemented in 2000, and to provide investors in the secondary market, on a relatively timely basis, the type of information currently required for primary market prospectus investors. The requirement is based on meeting certain defined thresholds of significance. It is patterned after a requirement of US federal securities law.

   a) Is this approach appropriate? Would it be more appropriate, for some or all classes of reporting issuer, to recast the BAR requirement as a subset of the material change reporting requirement, governed by the same trigger - the occurrence of a material change?

   We agree that the approach in the proposed rules is appropriate. We do not believe that the BAR requirement should be a subset of the material change report requirement.

   b) If the BAR requirement is recast as a subset of the material change reporting requirement, should the current thresholds of significance be retained? If so, should they demonstrate materiality in the absence of evidence to the contrary, or merely be guidelines to materiality?

   If the BAR requirement is recast, we believe that the current thresholds of significance should be retained and they should, in the absence of evidence to the contrary, demonstrate materiality.

3. *Disclosure of auditor review of interim financial statements* - Subsection 4.3(3) and section 6.5 of the Rule require that if an auditor has not performed a review of the interim financial statements, a reporting issuer must disclose that fact. These sections also require that if the auditor performed a review and expressed a qualified or adverse communication or denied any assurance, then the reporting issuer must include a written review report from the auditor accompanying the interim financial statements. Section 3.3 of the Policy elaborates that no positive statement is required when an auditor performed a review and provided an unqualified communication.

   This approach was designed to accommodate the requirement in Section 7050 of the Handbook that, if an auditor's interim review is referred to in any document containing the interim financial statements, the auditor should issue a written interim review report and request that it be included in the document. We understand that the CICA Assurance Standards Board currently has a project to amend Section 7050 and this requirement in Section 7050 may be changed. We also understand that the reporting provisions in Section 7050 relating to a scope limitation may be changed; if those

provisions of Section 7050 were changed, items (i) and (ii) of subsection 4.3(3)(b) may have to be modified.

a) Do you agree with the approach in subsection 4.3(3) and section 6.5 of the Rule? Alternatively, if a review was performed and an unqualified report was provided, should a reporting issuer be required to disclose the fact that a review has been performed? If you recommend the latter, what are the benefits of that disclosure?

No, we do not agree with the approach in subsection 4.3(3) and section 6.5 of the Rule. We would recommend that until Section 7050, Auditor *Review of Interim Financial Statements* is revised, there should be no reference to reviews in an issuers disclosure. The term "review" may be misunderstood by the users of the financial statements who may infer a greater level of assurance from such a review.

b) Where a review was performed and an unqualified report was provided, if a reporting issuer discloses that a review has been performed, should the review report from the auditor accompany the financial statements?

If there is to be a reference to the review, the nature and limitations should be clearly disclosed in a report which should be included with the financial statements. We believe that this should be addressed by the CICA.

4. *Added MD&A disclosure* - In the MD&A, we propose to require all issuers to discuss off-balance sheet arrangements, and to analyze changes in their accounting policies.

a) Would it be helpful to include a definition of "off-balance sheet arrangements" to the MD&A? What would you expect the definition would capture?

Yes, it would be helpful to include a definition of "off-balance sheet arrangements". We would expect the definition to capture all contractual obligations such as details of operating leases, commodity delivery arrangements, forward sales, guarantees etc.

b) The requirement to discuss and analyze changes in accounting policies applies to any accounting policies a reporting issuer expects to adopt subsequent to the date of its financial statement, and to any accounting policies that have been initially adopted during the financial period. We are considering whether this disclosure is appropriate for venture issuers. Should venture issuers be exempted from the requirement to discuss either changes in their accounting policies, or the adoption of an initial accounting policy, or both, and why?

We do not believe that venture issuers should be exempt from this requirement. For most issuers, many of the changes will not have a significant impact and therefore, can easily be dealt with by stating this fact. For the changes that will have a significant impact, it will be important for the issuer to discuss the impact of the changes in their filings.

Thank you for your consideration of the above-noted comments.

Yours truly,

Kelly E. Miller

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